of an improvement scheme to Sungei Puteh, undertook to contribute to the commissioner the sum of four hundred and ten thousand dollars ($410,000) being the company's agreed share of the cost of the desilting and the said improvement scheme. Nowhere does it appear in the agreement that the works were rendered necessary as a result of the negligence of the respondents in execution of the contract works though we may assume that the company's operation, whether or not negligent, may yet make an improvement scheme desirable. We are therefore of the opinion that the appellants cannot claim entitlement to set off this sum against the respondents, even though it may be said that, in terms of the agreement, the company is bound to pay the said amount.

We would also refer to the recent Court of Appeal decision in England reported in the *Times* of the 21st October, 1971 in the case of *Frederick Mark Ltd.* v. *Schild.*(2) The Court of Appeal in that case referred to *Dawnay's* case and categorically stated that the court agreed with every word Lord Denning said. This was to the effect that the purpose of interim certificates was to see that payments made under them were without any correlative right to set off or counterclaim as that would run counter to the very purpose of interim certificates — to provide cash for the contractor or sub-contractor to get on with the work. A debt due under an interim certificate was a debt of a class which ought not to be allowed to be made the subject of a set off or counterclaim.

We would respectfully follow the two decisions referred to and accordingly affirm the order of the trial judge and dismiss this appeal with costs.

*Appeal dismissed.*

Solicitors: *Ng Ek Teong & Partners; Joseph & Son.*

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## MOHAMED BIN LONG v. PUBLIC PROSECUTOR

**[F.C. (Suffian, Gill and Ong Hock Sim F.JJ.)**
**November 27, 1971]**

**[Kuala Lumpur — Federal Court Criminal Reference No. 2 of 1971]**

*Bribery and Corruption — Presumption — Whether presumption under s. 14 of Prevention of Corruption Act, 1961 prevails over the presumption under s. 30(1) of the Bills of Exchange Ordinance, 1949 — Whether cheque drawn by a third person and received by accused can be regarded as illegal gratification — Prevention of Corruption Act, 1961, ss. 4(a), 13 and 14.*

This was a reference to the Federal Court on the following questions of law:—

(1) whether the presumption under section 14 of the Prevention of Corruption Act, 1961, is a specific presumption;

(2) whether the presumption under section 30(1) of the Bills of Exchange Ordinance, 1949, is a general presumption;

(3) whether the presumption under section 14 of the Prevention of Corruption Act, 1961, as an alleged specific presumption prevails over the alleged general presumption under section 30(1) of the Bills of Exchange Ordinance, 1949;

(4) whether the gratification of $600 mentioned in the charge against the appellant as cheque No. S 759320 drawn on the Indian Overseas Bank Limited Mountbatten Road, Kuala Lumpur, by another firm other than the firm of Kapur Sawmill which latter firm was alleged to have given a bribe of $600 to the appellant in consideration of the appellant's alleged arrangement with Kapur Sawmill to refrain from collecting royalty on timber conveyed to Kapur Sawmill can be said to be a corrupt gratification in terms of the Prevention of Corruption Act, 1961.

The appellant had been convicted in the sessions court and his appeal to the High Court had been dismissed. The alleged gratification was in the form of a cheque drawn by a third party which was received by the appellant.

**Held:** (1) the presumption under section 14 of the Prevention of Corruption Act prevails over the presumption under section 30(1) of the Bills of Exchange Ordinance. There was in fact no conflict between the two presumptions as each deals with a different matter. The presumption under the Bills of Exchange Ordinance deals with civil claims based on cheques and it cannot arise in proceedings under the Prevention of Corruption Act, 1961;

(2) it is an offence for an agent to receive from any person gratification as a reward for showing favour to that person or to any other person, not necessarily the giver of the gratification;

(3) in this case there was evidence to show that the cheque was handed over to the appellant at the request of the party alleged to be framed by the appellant;

(4) in the circumstances the appellant was rightly convicted;

(5) both the learned president and the learned judge when disposing the matter overlooked the mandatory provisions of section 13 of the Act. In addition to the sentence imposed by the learned president, the appellant had to pay as penalty to the Forestry Department within 15 days the sum of $600 he accepted in contravention of the Act.

*Cases referred to:-*

(1) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89, P.C.

(2) *Subramaniam* v. *Public Prosecutor* [1956] M.L.J. 220, P.C.

(3) *Tan Chow Soo* v. *Ratna Ammal* [1969] 2 M.L.J. 49, P.C.

(4) *De Silva* v. *Public Prosecutor* [1964] M.L.J. 81.

(5) *Berry* v. *British Transport Commission* [1961] 3 All E.R. 65.

FEDERAL COURT.

*R. R. Chelliah* (*Wan Adnan* with him) for the appellant.

*Anwar bin Zainal Abidin* (Legal Adviser, Pahang) for the respondent.

*Cur. Adv. Vult.*

In the court below *C. O. Lim* (*Wan Adnan* with him) appeared for the appellant and *Hassan bin Ishak* (Deputy Public Prosecutor) for the respondent. The following judgment was delivered on May 16, 1971:

**Ibrahim J.:** This is an appeal against the decision of the learned president, sessions court, Kemaman, who convicted and sentenced the appellant to six months' imprisonment on the following charge:

"That you on or about 14.11.1965 at Kapur Sawmill Kerteh, in the District of Kemaman, in the State of Trengganu, being an agent employed by the Government of Malaysia, as a Forest Ranger of the Forest Department Trengganu did corruptly accept from one JOHNSON (m) for yourself a gratification of $600 in cheque No: S 759320 drawn on the Indian Overseas Bank Limited, Mountbatten Road, Kuala Lumpur

as a reward for forbearing to do an act in relation to your principal's affairs, *to wit*, failing to collect royalty on timber conveyed at Kapur Sawmill and that you have thereby committed an offence under section 4(a) of the Prevention of Corruption Act, No: 42 of 1961 and punishable under section 4 of the same Act."

The main witness for the prosecution was one named Johnson s/o Alexnetto (PW1). According to him he started work in Kapur Sawmill in Kerteh, Dungun, in January, 1964, and the nature of his work included keeping accounts of logs brought to the sawmill. The manager of the sawmill was one Peter Kow Kah Lok whose whereabouts at the time of the trial he did not know. After he had been employed for about three months he was called by the manager and introduced to one forest ranger whom he identified as the appellant but whose name he did not know, one forester and one forest guard named Yaacob. On the instruction of the manager he kept two account books, one in respect of logs for which royalty was paid and another for which royalty was not paid. The average amount of the unpaid royalty was about $2,000 a month. He received from the manager a cheque for $600 (P14) with certain instructions and on November 14, 1965 he handed it to the appellant at the sawmill. It was 50% of the evaded royalty. He recognised the appellant's signature at the back of P14. His service was subsequently terminated and on June 28, 1966 while in Kuala Lumpur he went to the anti-corruption office where he lodged a report about what was happening in Kapur Sawmill. P3 is copy of his report. In P3, PW1 did not specifically mention the appellant's name or office — what he said was that he knew that some of the Forest Department personnel were involved in the activities for he had "personally paid corrupt monies to one Yaacob, a forest personnel who is in charge of Kerteh Checking Station, on behalf of the management of the sawmill in order to overlook payments of royalty in respect of timber logs."

There was also other evidence adduced by the prosecution to establish that the signature at the back of P14 was the appellant's. The District Forest Officer, Trengganu South (PW9) identified that signature as that of the appellant whose signature he had seen in diaries and records in his office. The chief clerk of the District Forest Office, Dungun (PW11) also identified that signature as the appellant's. Other evidence was also adduced by the prosecution to establish that the appellant was a forest ranger of the Forest Department, Trengganu, and therefore an agent employed by the Government of Malaysia. PW10, the State forest officer, told the court when cross-examined that the appellant was on November 14, 1965 stationed in Dungun as a forest ranger.

The learned president summarised the evidence at the close of the prosecution case at great length and concluded that:

"the mere fact alone of the accused signature on the reverse of P14, raised the inference that P14 must have come into the hands of the accused. The accused as a forest ranger had no reason to accept such a cheque. Common sense alone therefore demanded that the accused should say why and what he was doing with the cheque. Hence, even if SP1 was totally disbelieved, the mere existence of the accused's signature on the reverse of P14 was in my view sufficient to invoke the presumption under section 14 of the Prevention of Corruption Act and the matters in paragraph (ha) would further go to corroborate the other evidence in showing that P14 must have been received by the accused corruptly."

The matters in paragraph (ha) mentioned above by the learned president refer to that part of his judgment dealing with the caution statement (P17) made by the appellant under section 15 of the Prevention of Corruption Act, 1961 (hereinafter referred to as the said Act) which was admitted for purposes of section 17 of the said Act.

The learned president accordingly called for the defence. In his evidence the appellant said that he was on November 14, 1965 a forest ranger stationed at Dungun. Kapur Sawmill was never under him and he denied that he had met PW1 there on that date or that he had ever been there before that date. He admitted that the signature at the back of P14 was his but alleged that he had received it from one Peter Koh whom he had known since 1959 and not from PW1. On November 15, 1965 at about 5 p.m. he went in his car to Sura Gate to fill in petrol and while he was there Peter Koh came and after telling him that it was important for him to go to the jungle he asked him to cash a cheque for him at Tiang Guan's shop. He also told him that he would collect the cash from him at about 8 p.m. the same day. He cashed the cheque as requested and the money was collected by Peter Koh that night. The said Peter Koh had died some time in the middle of 1968. He went on to explain how he acquired his $23,000 worth of properties with which the learned president was satisfied.

A statement to the police (P21) made by the appellant on November 4, 1968 (*i.e.* before his arrest) in the course of police investigation was admitted for the purpose of impeaching his credit under section 15 of the said Act. In P21 the appellant had given a different version of how he had received P14 from Peter Koh for therein he had said:

"Sometime in September or October, 1965 I made an agreement with Peter Khaw of Kapur Sawmill that I wanted to purchase timber for building a house in Kuala Trengganu. I paid $1,500 cash. It was a verbal agreement and he (deceased) gave me an acknowledgment in respect of the cash. About one month later Peter Khaw informed me in Dungun Town that he (deceased) could not provide the material as required by me. I then asked him (deceased) to refund the money. About a week later Peter Khaw (deceased) came to my house and paid me this cheque for $600 and promised to pay me the balance at later date. This took place when I was still stationed at Dungun."

He also mentioned about another cheque for $800 and $100 cash which Peter Koh subsequently paid him. The learned president considered the contradictions to be very material because as he said:

"these versions were the only means by which the court could know whether the accused had accepted P14 corruptly or the accused had created a reasonable doubt in the prosecution's case."

He also gave other reasons and held that "the version of how the accused came into possession of P14 was unreasonable or improbable". Further on he said:

"it therefore followed that he had not rebutted the presumption against him under section 14 of the Prevention of Corruption Act and this was so even if SP1 is not believed because I held that the mere presence of accused's signature on P14

was sufficient to invoke section 14 of the Prevention of Corruption Act. I accordingly found the accused guilty of the offence charged against him. He was accordingly convicted."

There are many grounds of appeal but some of them overlap and are so closely connected with each other that they may be conveniently dealt with together. The learned president wrote a very detailed and lengthy judgment and one of the grounds of appeal (ground 2) is that the learned president had misdirected himself both in law and in fact when he considered by fits and starts at varying stages during the prosecution case what had or had not been proved. The learned president was satisfied (page 44) that PW1 had handed P14 to the appellant but though he had first found that PW1 had kept those two account books he at a later stage doubted their existence and held that the royalties evasion scheme was not *prima facie* proved. It is contended by the appellant (grounds 7 and 14) that the learned president had misdirected himself and erred in law when having doubted the existence of the two books of account and held that the royalties evasion scheme was not proved he called on the appellant to enter upon his defence. It is true that the learned president's lengthy judgment makes very laborious reading and that his assessment of PW1's evidence shows that he was not prepared to place much reliance on it but there is in my view sufficient reliable evidence on which the learned president had called for the defence. There was evidence independent of PW1's that the appellant was an agent employed by the Government of Malaysia and that P14 had been received by him and on the establishment of those two ingredients it was proper for the learned president to have invoked section 14 of the said Act which reads as follows:

"Where in any proceedings against a person for an offence under section 3 or 4 it is proved that any gratification has been paid or given to or received by a person in the employment of any public body, such gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned, unless the contrary is proved."

In *Public Prosecutor* v. *Yuvaraj*[1] Lord Diplock delivering the judgment of the Board at pages 90-91 said:

"Where a defendant is charged with an offence under section 4(a) of the Prevention of Corruption Act 1961, to which section 14 also applied, the onus lies upon the prosecution to prove the first two factual ingredients of the offence *viz.* (1) that a gratification was paid or given to or received by the defendant and (2) that at the time of the payment, gift or receipt he was in the employment of a public body. Upon proof of these two ingredients the existence of the third ingredient, *viz.* (3) that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of that public body, is to be presumed unless the contrary is proved."

Another ground of appeal (ground 5) is that the learned president had misdirected himself in law when he considered and held that illustration (h) of section 114 of the Evidence Ordinance, 1950, applied *vis-a-vis* section 17(1) of the said Act. In the caution statement, P17, the appellant had listed his properties which totalled in value to $23,000 but when asked to explain how he had acquired them he said that he did not wish to say anything about the matter at that juncture. Under section 17(2) the appellant was not bound to make an explanation to the officer who recorded his statement and the fact that he had not given the explanation to that officer does not necessarily mean that "he cannot satisfactorily account for his properties" at the appropriate time in the appropriate forum. In my view, therefore, the learned president was wrong when he invoked Illustration (h) of section 114 of the Evidence Ordinance. Incidentally, when the appellant gave evidence the learned president was satisfied with the explanation given by the appellant and held that the properties acquired by him were not disproportionate to his known sources of income. This error, however, is not fatal to the success of the prosecution for even without that corroborative evidence there is sufficient evidence adduced which with the aid of the presumption under section 14 of the said Act justified the learned president to call for the defence.

It is also contended (ground 6) that the learned president had misdirected himself in law in holding that Exhibit P14 came within the definition of gratification in section 2 of the said Act. The said definition reads as follows:

"'gratification' includes —

(a) money or any gift, loan, fee, reward, valuable security or other property or interest in property of any description, whether movable or immovable;"

I do not agree with this contention for it is quite obvious that a cheque is "property" which could be subject-matter of a "gift" or "reward" just as it could be subject-matter of a "theft." It is also contended that there is a presumption of value and good faith under section 30(1) of the Bills of Exchange Ordinance, No. 75 of 1949, which would rebut the presumption under section 14 of the said Act. The said section 30(1) reads as follows:

"Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value."

I do not also agree with this contention. It should be the reverse for whereas the presumption under the said section 30(1) is a general presumption that under the said section 14 is a specific one which only arises after certain facts had been proved. It was proved that the appellant who was a forest ranger had received P14 from PW1 who was an employee of a sawmill and in the absence of any purpose other than that alleged by PW1 (however unreliable the learned president had considered his evidence to be) the presumption under the said section 14 that it was for a corrupt purpose must prevail.

One other ground of appeal (ground 8) directed against the learned president's decision to call for the defence was that he had erred in law in admitting the evidence of PW1 relating to the conversation between him and Peter Koh and that admission of such evidence had prejudiced the appellant. I do not agree with this. The learned president had written a careful judgment on why he admitted that evidence, not for proof —

"of what was said by Peter but ... only for the proof of the fact that those were the words uttered by Peter to SP1 and also as evidence which was relevant when considering the mental state and conduct thereafter of SP1"

and he referred to the following passage in the judgment of Mr. L.M.D. de Silva in *Subramaniam* v. *Public Prosecutor*[2]:

"In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes."

With reference to the defence put up by the appellant it is contended that the learned president misdirected himself in law (ground 1) in placing a burden on the appellant which the law did not, and (ground 3) when he held that the appellant had not convinced him that he was telling the truth. It is true that the learned president had said in his judgment that the appellant had not convinced him that he was telling the truth but this does not mean that he expected the appellant to prove his case beyond reasonable doubt for he had gone on to say that because of the existence of the two irreconcilable versions he could not find "how the defence could have been said to be a reasonable or probable one." There are also other passages in his judgment which clearly show that he was all the time aware of the burden of proof required of the defence, *i.e.* the balance of probabilities, as laid down in *Public Prosecutor* v. *Yuvaraj, supra,* where it was held that:

"upon the true construction of the Evidence Ordinance, 1950, and the Prevention of Corruption Act, 1961, there is no relevant difference between the two descriptions of the burden of rebutting the presumption of corruption which are contained in the question if "the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable" is understood as meaning "the burden of rebutting such presumption is discharged if the court considers that on the balance of probabilities the gratification was not paid or given and received corruptly as an inducement or reward as mentioned in section 3 or 4 of the Prevention of Corruption Act, 1961."

What appears to be the main ground of appeal (ground 9) is that the learned president was wrong in law in permitting the prosecution to impeach the credit of the appellant by using the statement made by the appellant in the course of police investigation. That statement (P21) was recorded on November 4, 1968 in the course of police investigation under section 112 of the Criminal Procedure Code and it is contended that since the appellant was legally bound to make the statement the appellant was in a worse position than having been induced *etc.* within the meaning of proviso (a) to section 15(1) of the said Act. It is clear from the said section 15(1) that such a statement is admissible and I see no reason to interfere with the learned president's finding that "the statement was permissible for use by the prosecution for the purpose mentioned in section 15(1) of the Prevention of Corruption Act, 1961." The said section 15(1) provides *inter alia* as follows: —

"15.(1) In any trial or inquiry by a court into any offence under this Act, ... any statement by an accused person ... shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit."

It is also contended (ground 4) that the learned president in quoting the case of *Tan Chow Soo* v. *Ratna Ammal*[3] drew therefrom incorrect inferences and analysis detrimental to the appellant. With respect I cannot see how the learned president's reference to the case of *Tan Chow Soo* v. *Ratna Ammal* could be said to be detrimental to the appellant. In his judgment the learned president referred to the following judgment of Lord Diplock:

"The learned Chief Justice of Malaya said of this 'In my opinion if a witness made two contradictory statements on the same matter he must be held to perjure himself unless perhaps he could satisfy the court that there was compulsion or duress in the making of one .... So that in my view, the evidence of Lee Yim Wah in reference to the alleged conspiracy must be totally disregarded with the result that the court was left to consider on the uncorroborated evidence of the respondent alone.' In their Lordships' view this puts the matter far too high. No doubt the fact that a witness has made a previous contrary statement particularly in the solemn form of a statutory declaration is a matter to be given great weight in considering whether his oral evidence is to be believed. But the learned judge who was fully conscious of this was in their Lordships' view entitled if satisfied that Lee's later statement was true to accept and act upon it."

He also had in mind the judgment of Gill J. (as he then was) in *De Silva* v. *Public Prosecutor*[4] which he quoted thus:

"Discrepancies and contradictions there will always be in any case. In considering them what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy. .... Perhaps some part of the complainant's evidence was not true, but the question is whether a Court can reject the whole of his evidence because of some lies in his evidence."

He then went on to analyse the evidence produced by the defence and concluded that the version of how the appellant came into possession of P14 was unreasonable or improbable.

Another ground of appeal (ground 12) is that the learned president misdirected himself in law in holding that the appellant has been discredited by the different versions between his statement given to SP14 and his evidence in court having regard to the lapse of about 3 years between the alleged incident and the recording of the statement from the appellant by SP14. I cannot see any merit in this ground of appeal It is reasonable to assume that a person would remember something which actually happened better than something which he had concocted and it is unfortunate on the part of the appellant that because of the lapse of time he had forgotten what he had said in P21 when he gave evidence in the court.

It is also contended (ground 11) that having doubted the truth of SP1's evidence the learned president failed to give due weight to the evidence of the defence and that (ground 15) the verdict is unreasonable and cannot be supported having regard to the evidence. It is obvious that once the appellant had been impeached there is nothing left in the defence for the learned president to consider and I therefore can see no merit in these contentions. Nor could I see any

merit or real significance in the remaining ground of appeal (ground 13) that the learned president misdirected himself in law in holding that "the accused was only able to tell to which transaction P14 related to only by the date on it."

I therefore dismiss the appeal and confirm the conviction and also the sentence which in the circumstances of this case I consider is not manifestly excessive.

*On the application of counsel for the appellant, the learned judge referred the case to the Federal Court under section 66 of the Courts of Judicature Act, 1964.*

**Suffian F.J.** (read by **Ong Hock Sim F.J.**): This is a reference under section 66 of the Courts of Judicature Act on the following questions of law:

(1) whether the presumption under section 14 of the Prevention of Corruption Act, 1961, is a specific presumption;

(2) whether the presumption under section 30(1) of the Bills of Exchange Ordinance, 1949, is a general presumption;

(3) whether the presumption under section 14 of the Prevention of Corruption Act, 1961, as an alleged specific presumption prevails over the alleged general presumption under section 30(1) of the Bills of Exchange Ordinance, 1949;

(4) whether the gratification of $600 mentioned in the charge against the appellant as cheque No. S 759320 drawn on the Indian Overseas Bank Limited, Mountbatten Road, Kuala Lumpur, by another firm other than the firm of Kapur Sawmill which latter firm was alleged to have given a bribe of $600 to the appellant in consideration of the appellant's alleged arrangement with Kapur Sawmill to refrain from collecting royalty on timber conveyed to Kapur Sawmill can be said to be a corrupt gratification in terms of the Prevention of Corruption Act, 1961.

To understand the significance of these questions, it is necessary to state briefly the facts of this case.

On 21st January, 1970, the appellant was convicted by the learned president, sessions court, Kemaman, and sentenced to six months' imprisonment on the following charge:

"That you on or about 14.11.1965 at Kapur Sawmill, Kerteh, in District of Kemaman, in the State of Trengganu, being an agent employed by the Government of Malaysia, as a Forest Ranger of the Forest Department, Trengganu, did corruptly accept from one JOHNSON (m) for yourself a gratification of $600/- in cheque No. S 759320 drawn on the Indian Overseas Bank Limited, Mountbatten Road, Kuala Lumpur, as a reward for forbearing to do an act in relation to your principal's affairs, *to wit*, failing to collect royalty on timber conveyed to Kapur Sawmill, and that you have thereby committed an offence under section 4(a) of the Prevention of Corruption Act No. 42 of 1961 and punishable under Section 4 of the same Act."

The appellant appealed to the High Court and on 16th May, 1971, his appeal was dismissed.

On the application of his counsel, this reference was made by the learned appellate judge.

It will be noted that the prosecution alleged that the appellant was a forest ranger, that his duty was to collect on behalf of the Government royalty on timber conveyed to the Kapur Sawmill, that he failed to do so in full (saving money for the sawmill) and that he received a cheque for $600 as a reward for thus showing favour to the sawmill. The offence is alleged to have occurred on 14th November, 1965, but the appellant was not arrested until 3½ years later on 15th April, 1969.

The offence was first brought to the notice of the Anti-Corruption Agency by Mr. Johnson (PW1), an employee of the Kapur Sawmill in Kerteh on 28th June, 1966. PW1 had during the 1965 Christmas holidays while in Kuala Lumpur received a telegram from the sawmill terminating his service on the ground that he had taken leave without permission. He did not, however, go to the Anti-Corruption Agency immediately on receipt of that telegram. He waited about six months until 28th June, 1966, when he made a report to them, Exhibit P3. The gist of the report is that the sawmill had failed to pay royalty in respect of some timber received by it. He mentioned one Yaacob, an employee of the Forest Department, as being involved. He did not, however, mention the accused either by name or by implication.

At the trial of the appellant, PW1 gave evidence as follows. He started to work for the sawmill in January 1964. Its manager was Mr. Peter Kow. In the third month of his employment the manager introduced him to some employees of the Forest Department, including the appellant who was a forest ranger. The manager told him to record the number of logs brought into the sawmill. The manager told him to keep two books. One book was to record the number of logs on which royalty was to be paid to Government. The other book was to record the number of logs on which royalty was not paid to the Government. The average amount of royalty not paid to the Government was $2,000 per month. Half of this amount was to be paid to three officers of the Forestry Department.

Liza de Cruz was a partner of the East Coast Lumber and Milling Company. PW1 said that one day the manager of the sawmill gave him a cheque, Exhibit P14. The cheque was signed by Liza. The manager told PW1 to give it to the appellant. On 14th November, 1965, PW1 gave it to the appellant. Eventually the cheque was traced and produced in court. PW1 identified one of the signatures at the back of the cheque as the appellant's.

Peter Kow died in 1968 and so could not be called to give evidence.

Liza de Cruz, however, gave evidence. She said that Peter Kow was a shareholder and the manager of the sawmill. She was also a shareholder. The cheque was drawn by another body, the East Coast Lumber and Milling Co., and she was one of its signatories.

There was evidence that Peter Kow and Liza de Cruz were also shareholders of that company.

PW5, a shopkeeper in Kuala Dungun, said that he gave cash for the cheque in his shop to the person who signed it at the back. He could not remember

who that person was, though he knew the accused as a customer.

Section 14 of the Prevention of Corruption Act creates a presumption against the appellant in the following words:

"Where in any proceedings against a person for an offence under section 3 or 4 it is proved that any gratification has been paid or given to or received by a person in the employment of any public body, such gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned, unless the contrary is proved."

In *Public Prosecutor* v. *Yuvaraj*[1] Lord Diplock, giving the advice of the Privy Council on the effect of that presumption, said at pages 90-91:

"Where a defendant is charged with an offence under section 4(a) of the Prevention of Corruption Act, 1961, to which section 14 also applies, the onus lies upon the prosecution to prove the first two factual ingredients of the offence, namely —

(1) that a gratification was paid or given to or received by the defendant; and

(2) that at the time of the payment, gift or receipt he was in the employment of a public body.

Upon proof of these two ingredients, the existence of the third ingredient, namely —

(3) that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of that public body,

is to be presumed unless the contrary is proved."

The learned president found as a fact that the cheque was a gratification, that it was paid or given to the appellant, that at that time he was in the employment of a public body, and that the appellant had endorsed the reverse of the cheque and had received cash for it from the shopkeeper. Accordingly the learned president held under section 14 that the cheque had been paid or given corruptly to the appellant, unless the contrary was proved, and called on him to make his defence.

Briefly the appellant's evidence was that Peter Kow gave him the cheque and asked him to cash it for him, that he cashed it and handed the money to Peter Kow, and that there was nothing corrupt about it.

The learned president held that the appellant had not given a reasonably or probably true explanation of how he acquired the cheque and that therefore he had not rebutted the presumption against him under section 14 of the Act. The learned president was aware of the test laid down by *Yuvaraj's* case, and there is no complaint about it before us. He convicted the accused and sentenced him to six months' imprisonment.

The first two questions referred to us used the words "specific presumption" and "general presumption". To understand the significance of the words "specific" and "general", it is necessary to refer to a presumption raised by section 30(1) of the Bills of Exchange Ordinance, 1949, which reads:

"Every party whose signature appears on a [cheque] is *prima facie* deemed to have become a party thereto for value."

Section 2 defines "value" as meaning valuable consideration.

Section 27(1)(a) provides:

"Valuable consideration for a [cheque] may be constituted by any consideration sufficient to support a simple contract."

It was said that by virtue of the Bills of Exchange Ordinance the fact that the appellant's signature appeared on the reverse of the cheque means that he became a party to it for valuable consideration sufficient to support a simple contract: in other words there was nothing corrupt about it. It will be noted that the charge alleged that the accused was rewarded for showing a favour to the Kapur Sawmill. In fact the cheque admitted to have been received by him was not drawn by the sawmill alleged to have been favoured by him, but by a third party unconnected with the sawmill.

The same argument was advanced before the appellate judge, but he rejected it in the following words:

"It is also contended that there is a presumption of value and good faith under section 30(1) of the Bills of Exchange Ordinance, No. 75 of 1949, which would rebut the presumption under section 14 of the said Act. ... I do not also agree with this contention. It should be the reverse for whereas the presumption under the said section 30(1) is a general presumption that under the said section 14 is a specific one which only arises after certain facts had been proved. It was proved that the appellant who was a Forest Ranger had received [a cheque] P14 from PW1 who was an employee of a sawmill and in the absence of any purpose other than that alleged by PW1 (however unreliable the learned president had considered his evidence to be) the presumption under the said section 14 that it was for a corrupt purpose must prevail."

It will be noticed that he referred to the presumption under the Bills of Exchange Ordinance as a general presumption and to the presumption under the Prevention of Corruption Act as a specific one which only arose after certain facts had been proved. In the result he concluded that the presumption under the Act that the payment was for a corrupt purpose must prevail over the presumption under the Bills of Exchange Ordinance.

Before us Mr. Chelliah for the appellant submits that the answer to the first two questions is that there is no such thing as a specific presumption or a general presumption, as presumptions are either those of law or of fact and either they are rebuttable or irrebuttable. We agree and there is no need to deal with these two questions further.

As regards the other two questions, Mr. Chelliah prefers to deal with the fourth before the third. Briefly, his submission as regards the fourth question is that a cheque drawn by a third party unconnected with the party alleged to have been favoured could not amount to a gratification within the meaning of the Prevention of Corruption Act in the absence of any evidence that the cheque was given to the appellant by or on behalf of the person alleged to have been favoured by the appellant. Mr. Chelliah submits that the learned president was not happy with PW1's evidence, but depended solely on his finding that the appellant's signature appeared on the cheque P14 and on the statutory presumption under section 14. He submits that the words "any person" appearing twice in section 4(a) must refer to one and the same person: in other words,

the offence created by that section consists of an agent accepting from any person a gratification as a reward for showing favour to *that* person, and not for showing favour to other than that person. He submits that, if PW1's evidence is ignored, there is no evidence at all showing how the cheque P14 got into the appellant's hands and showing what favour the appellant had shown, and that therefore there was no case against the appellant.

Mr. Chelliah says that in view of section 30(1) of the Bills of Exchange Ordinance and the definition of "value" in section 2 and in view of the provisions of paragraph (a) of subsection (1) of section 27 of that Ordinance, there arises in this case a presumption in favour of the appellant that he has given value for the cheque, a presumption that conflicts with the presumption against the appellant under section 14 of the Prevention of Corruption Act. Mr. Chelliah submits that in the circumstances the two presumptions neutralise each other, and thereupon the presumption of innocence springs into prominence. Mr. Chelliah cites from *Berry* v. *British Transport Commission*[2] the following passage at page 75 from the judgment of Devlin L.J.:

"... presumptions of law ought to be used only where their use is strictly necessary for the ends of justice. They are inherently undesirable ... because they prevent the court from ascertaining the truth, which should be the prime object of a judicial investigation, and because, if they are allowed to multiply to excess, the law will become divorced from reality and will live among fantasies of its own."

Mr. Chelliah next cites from *Phipson* on Evidence, 10th edition, the following passage from page 103:

"Conflicting presumptions, however, neutralise each other, and leave the case at large to be determined solely on the evidence given."

and the following passage from page 343 of 15 *Halsbury's* Laws of England, 3rd edition:

"Where, however, two rebuttable presumptions of inconsistent character arise, they neutralise each other, and the matter must be decided on the evidence actually adduced."

Thus, it is submitted that the answer to the third question is that the presumption under section 14 of the Prevention of Corruption Act neutralises the presumption under section 30(1) of the Bills of Exchange Ordinance, that the presumption of innocence prevails and that the case against the appellant falls to be decided on the evidence alone.

In our judgment the answers to the third and fourth questions are as follows.

The presumption under section 14 of the Prevention of Corruption Act prevails over the presumption under section 30(1) of the Bills of Exchange Ordinance.

There is no conflict between the two presumptions. Each deals with a different matter. The first presumption means this, that if a person is proceeded against for an offence under section 3 or 4 of the Act and it is proved that a gratification such as a cheque has been given to a person and that that person is employed by a public authority, then it is presumed that that cheque has been given to him corruptly, unless the contrary is proved. The second presumption under the Ordinance deals with a totally different matter. It deals with claims based on cheques. If for instance the East Coast Lumber and Milling Co. had stopped payment of the cheque in question and they had been sued on it by the holder of the cheque, then there arises a presumption that every party such as the appellant whose signature appears on the cheque has given value for it. But this presumption cannot arise in proceedings under the Prevention of Corruption Act. In any event, let it be noted this presumption is only *prima facie*, and certainly in proceedings against any person under section 3 or 4 of the Prevention of Corruption Act a different presumption has been created by statute against any person who has received such a cheque.

As regards the fourth question, our answer is yes, the cheque drawn by the East Coast Lumber and Milling Co. and received by the appellant could be regarded as a corrupt gratification as a reward for showing favour not to the company but to the Kapur Sawmill. We do not agree with Mr. Chelliah that the words "any person" which appear twice in paragraph (a) of section 4 of the Act must refer to one and the same person. In our judgment it is an offence for an agent to accept from any person a gratification as a reward for showing favour to that person *or to any other person*, not necessarily the giver of the gratification. In any event in the instant case PW1 said in evidence that it was Peter Kow the manager of Kapur Sawmill, the party alleged to have been favoured by the appellant, who asked PW1 to hand over the cheque to the appellant and that he did hand it over to the appellant, and the learned president found as a fact that PW1 handed over the cheque to the appellant. There was also evidence that Liza de Cruz, one of the signatories of the cheque, was a shareholder of the sawmill, and that both Peter Kow and Liza de Cruz were also shareholders of the East Coast Lumber and Milling Co.

In the circumstances we are of the opinion that the appellant was rightly convicted.

When disposing of this matter, both the learned president and the learned judge overlooked the mandatory provisions of section 13 of the Act. In addition to the sentence imposed by the learned president, we hereby order the appellant to pay as a penalty to the Forestry Department of Trengganu within 15 days the sum of $600 the acceptance of which by him in contravention of the Act has been proved.

*Reference answered.*

Solicitors: *Adnan & Wee.*